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PA/HO Department of State

E.O. 12958, as amended

July 12, 2005

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Authority WND979603By CC NARA Date 1-26-04DEPARTMENT OF STATE  
THE LEGAL ADVISER

May 29, 1969

8443

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MEMORANDUM

TO : J - Ambassador Johnson ✓

THROUGH: S/S *fw*

FROM : L - George H. Aldrich *GHA*

SUBJECT: Seabeds -- Principles ACTION MEMORANDUM

With one exception, the Department of Interior has agreed to our draft statement of seabed principles. They have proposed language, which you have seen, that substantially alters the principle concerning a boundary for the area beyond national jurisdiction. Since June 1968 the United States has called for an "internationally agreed" precise boundary. The Interior language substitutes a call for precise definition of an "internationally accepted" boundary. Interior also refuses to accept our proposal for a moratorium on boundary claims.

I understand that, upon the advice of Mr. Pollack of SCI, you have agreed to the substitute language proposed by Interior.

The purpose of this memorandum is to request that, for the reasons given below, you reverse this decision.

DISCUSSION:

1. If the United States proposes the Interior language, without making a concomitant moratorium proposal, the option of eventual agreement to a narrow zone of coastal State jurisdiction will in a very short time disappear. This will be true regardless of whether the United States in fact exercises jurisdiction beyond its geologic shelf. Other nations, apparently at the behest of U.S. oil companies, are currently granting large seabed concessions to private oil companies. Often these concessions include areas which

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extend to the deep ocean floor. If such exercises of jurisdiction are not objected to by any State they will be, in Interior's proposed language, "internationally accepted." It was by this procedure that the Truman Proclamation of 1945 came to be "accepted" as international law.

At Tab A is a memorandum which explains more fully the reasons why the United States should propose a moratorium.

2. The National Petroleum Council and several nations who favor a broad boundary of coastal State jurisdiction have consistently maintained that the boundary should be established by interpretation of the Geneva Convention, rather than by new agreement. Proposal by the United States of the position favored by Interior would generally be understood as acceptance of this "interpretation" position and a reversal of the position favoring an "agreed" boundary, which we have consistently maintained to date.

3. In addition to the above view, the NPC strongly asserts that under the Convention coastal States now have exclusive rights over the entire submerged continental terrace -- i.e., to the deep ocean floor. U.S. acceptance of the Interior language may well be understood as acceptance of this part of the NPC position as well. The practical result would probably be that we shall lose the option of ever establishing a narrow zone of coastal State jurisdiction, either by new agreement or through interpretation of the Geneva Convention.

4. Quite apart from the above arguments, if we agree that our goal is the definition of a precise boundary, there are a number of reasons why it should be sought through agreement, rather than by interpretation of the Geneva Convention: the most obvious is that an interpretation of the highly ambiguous language of the Convention can more readily be

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abandoned by new governments in other countries than could  
a new agreement employing clearer language.

5. I would point out that our language does not prevent us from deciding at some point to seek to establish a boundary by interpretation if a new agreement cannot be obtained. Therefore, it does not prejudice Interior's position, but Interior's language prejudices our position.

RECOMMENDATION:

That you decide that the United States should continue to seek an agreed boundary to the continental shelf and a moratorium on national claims.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

JUN 2 1982

## Attachment:

Seabeds Moratorium - Background and Considerations

cc: U - Mr. Richardson  
E - Mr. Samuels  
SCI - Mr. Pollack  
IO - Mr. Popper

L/SPA:JGCarter:edk

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SEABEDS MORATORIUM - BACKGROUND AND CONSIDERATIONS

SUMMARY:

For the past several months there have been persistent but unsuccessful attempts to reach agreement within the United States Government on a moratorium proposal that will protect important options regarding the eventual location of an agreed boundary of coastal State jurisdiction over seabed areas. If this Government does not propose a moratorium for boundary claims we run a serious risk that, as a practical matter, within the fairly near future the option of establishing a narrow zone of coastal State jurisdiction will be lost. This memorandum reviews the factors relevant to a moratorium proposal and points out courses of action available to obtain resolution of this issue.

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BACKGROUND:

Since late 1967 this Government and the international community have been engaged in active consideration of the seabeds item introduced by Ambassador Pardo of Malta. Most efforts to date have been directed toward accumulation of basic facts and adoption of a set of principles to guide future efforts. The two ultimate, and closely interrelated, issues are:

- a) What is, or should be, the boundary of coastal State jurisdiction; and
- b) What regime should be applicable in the area beyond the limits of coastal State jurisdiction?

Existing international law and agreements do not provide a clear answer, or a satisfactory basis for arriving at a clear and broadly accepted answer, to either of these questions. There is no doubt that under the 1958 Continental Shelf Convention all coastal nations (with the possible exception of those possessing extensive shallow offshore areas extending several hundred miles) have exclusive jurisdiction over seabed resources to a depth of 200 meters. In the recent North Sea cases the ICJ indicated that customary international law allows a coastal State to exercise such

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jurisdiction over its geologic continental shelf. (The geologic shelf normally ends at about 200 meters, but shelves as shallow as 50 meters and as deep as 550 meters are not unknown.) There is doubt as to the right of a coastal State to extend its exclusive jurisdiction beyond the edge of the shelf and as to the sufficiency of existing law to facilitate exploitation of the area beyond.

In June 1968 in the Ad Hoc Seabeds Committee, the U.S. proposed, and has often reaffirmed, a set of principles that calls for agreed solutions to both issues and sets forth guidelines to be followed in seeking agreement. Paragraph 3 reflects our desire to allow seabed activities to continue at ever-increasing depths without destroying the practical possibility of reaching agreement on a narrow zone of coastal State jurisdiction should this result prove to be in our interest:

"Taking into account the Geneva Convention of 1958 on the Continental Shelf, there shall be established, as soon as practicable, an internationally agreed precise boundary for the deep ocean floor -- the sea-bed and subsoil beyond that over which coastal States may exercise sovereign rights for the purpose of exploration and exploitation of its natural resources; exploitation of the natural resources of the ocean floor that occurs prior to establishment of the boundary shall be understood not to prejudice its location, regardless of whether the coastal State considers the exploitation to have occurred on its 'continental shelf'".

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Since December 1968 the State Department has been seeking authority to propose in the Seabeds Committee that all nations should refrain from making boundary claims until efforts could be made to reach international agreement on the boundary and regime issues. Such a moratorium proposal would effectively protect the possibility of agreement to a narrow zone and prevent a race to establish paper claims to vast seabed areas while such efforts are undertaken. The following relevant views have emerged:

1. The Oil Industry objected to principle 3, above, and opposes any moratorium proposal. In July, 1968 the National Petroleum Council (NPC), announced its conclusion that the United States, and other nations, now "have exclusive jurisdiction over the natural resources of the continental land mass seaward generally to where the submerged portion of that land mass meets the abyssal ocean floor" (i.e., we now have a broad zone of jurisdiction to a depth of at least 2,500 meters). The Council recommended that the U.S. forthwith "declare its full rights ... as described above ... ." NPC representatives explain that these positions, which are still maintained, are not offered for the purpose of furthering

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the Oil Industry's interests, but only to further the national interests in protecting the "American mineral estate."

2. Spokesmen for the hard minerals industry are not as unified as the oil men. Several reject the NPC view as to the extent of present jurisdiction and favor rapid adoption of a boundary and regime that will facilitate exploitation of the area beyond national jurisdiction. They would probably support a moratorium proposal.

3. The Department of Defense has consistently maintained that our national security interests require that we favor a narrow zone of coastal State jurisdiction (200 meters, or at the most 550 meters). See letters from Deputy Secretaries Nitze and Packard at Tabs A and B. However, DOD spokesmen have stated that under an undesirable regime (i.e. UNGA control) they might prefer a broad zone of national jurisdiction. DOD favors an effective moratorium proposal.

4. The Departments of Interior and Commerce have stated their preference for a broad zone of national jurisdiction; they have opposed every moratorium proposal made by State. However, they say they are not opposed to the principle

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of a moratorium, and that they do not accept the NPC view that coastal State jurisdiction now extends to the deep ocean floor. On Tuesday, May 20, State and Interior representatives met to lay the groundwork for the meeting of State and Interior Undersecretaries May 22.

5. At the international level, Ambassador Pardo has proposed that a "minimum" area beyond the limits of national jurisdiction be defined as that area beyond 200 meters and 200 miles. This proposal has received little support to date but it will be debated at the August meeting of the Seabeds Committee. Its adoption, we believe, would effectively preclude eventual agreement to a narrow zone of coastal State jurisdiction.

DISCUSSION:

In considering the importance of obtaining authority to propose a moratorium on boundary claims it is necessary to assess the probable results of our failure to make such a proposal, the result of making the proposal, and the effect of such results upon our interests. It is then necessary to consider the details of an acceptable moratorium.

FAILURE TO PROPOSE A MORATORIUM:

If we fail to make a moratorium proposal we can reasonably expect that other nations will continue to grant offshore

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exploration and exploitation permits covering seabed areas at great distances from shore, substantially beyond the geologic continental shelf and down to the abyssal ocean floor. These countries will be disinclined to agree later to a boundary landward of areas covered by the permits unless a moratorium proposal is adopted, or at least made, particularly if their permittees (U.S. oil companies) demand that they not do so. Unless we protest such permits, or the enabling legislation which authorizes them, we can expect that other States, the Oil Industry and possibly other agencies of the U.S. Government will argue that "State practice" has established that coastal State jurisdiction extends to the abyssal floor (i.e. to approximately 2500 meters). In short, the passage of time is strongly against preserving the possibility of later agreeing to a narrow zone of coastal State jurisdiction. The evidence of a trend toward a broad zone of coastal State jurisdiction is rapidly mounting:

a) Sudan and Saudi Arabia have each recently asserted jurisdiction over the floor of the Red Sea, which is about 7000 feet deep and 200 miles wide.

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b) Iceland has recently adopted legislation stating that its continental shelf "reaches ... as far from the country's shore as it proves possible to exploit its wealth."

c) Apparently several countries, particularly in Southeast Asia and at the behest of U.S. companies, are issuing permits which cover very large seabed areas, including areas that extend to the abyssal ocean floor. An example is provided by a request from Gulf Oil to the Republic of China for a large concession north of Taiwan. (We have received this information from Gulf on a confidential basis.)

d) The NPC has noted in its report that 29 countries have granted offshore concessions for areas deeper than 200 meters. NPC spokesmen have recently stressed that international law is evolving through State practice in this regard. (On this point it is important to bear in mind that all such concessions, including those granted by the U.S., include shallow areas as well as deep areas and that the concessions are sought primarily because of the shallow areas. However, this fact does not completely

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destroy the point that such concessions may constitute an exercise of sovereign rights over the deep areas as well.)

PROPOSAL OF A MORATORIUM.

If the United States makes a moratorium proposal and acts in accord with it, both in its leasing policy and in its relations with other countries, we probably can protect the possibility of an internationally agreed narrow zone of national jurisdiction and prevent a race to grab seabed areas while efforts are made to reach agreement on the boundary and regime issues. Clearly this is true if the UNGA adopts the proposal; it is probably true, for reasons given below, even if the proposal is not accepted by all, or even a majority, of the members of the Seabed Committee. Most offshore exploitation is conducted by U.S. companies -- because they have the knowhow and capital and because of advantages offered by United States tax law. However, because of U.S. tax law, a U.S. company probably will not exploit an area leased from a foreign country unless the U.S. recognizes that country's right to lease the area concerned. The possibility that the United States Government

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will eventually decide that coastal States do not have jurisdiction beyond a certain point will discourage exploitation beyond that point unless there is general agreement -- along the lines of our moratorium proposal -- that such exploitation can occur and should be protected even after a boundary is drawn landward of it.

Our Interests.

At the working level all concerned agencies of the Executive Branch have agreed the U.S. has at least the following interests which will be affected by the eventual solutions for the seabed boundary and regime issues:

a) Foreign Policy. Bilateral and multilateral disputes over boundaries, claims to distant seabed areas, expropriations of foreign investments, etc., should be avoided; if they arise, they should be resolved by a compulsory dispute settlement procedure. Seabeds solutions should also encourage international cooperation, hopefully providing useful precedent for other matters of clear international concern.

b) Access to Resources. The U.S. and its nationals should have access, on reasonable terms and conditions, over

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the long run to the maximum quantity of all economically recoverable resources -- known and presently unknown -- of the submerged areas of the world.

c) Access to Seabed for Other Uses. The U.S. also has a great interest -- largely for national defense and scientific investigation -- in protecting our right to use seabed areas off other nations' coasts, as well as our own, for purposes, consistent with international law and agreement, other than natural resource exploration or exploitation.

d) Use of the Superjacent Water Column and Air Space. For commercial and national defense reasons we have a great interest in assuring our continued right to exercise the freedoms of the high seas in all waters and air space presently subject to the regime of the high seas.

The U.S. has no immediate or near term requirements for resources known or suspected to exist beyond the geologic shelf.

The U.S. Government has not decided what boundary/regime combination would best serve the interests listed above.

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In June 1968, it decided that internationally agreed solutions were preferable to solutions resulting from unilateral actions by coastal states. In January, 1969 it decided that all options should be kept open while further studies were undertaken to determine the most desirable boundary/regime combination. There is general agreement within the government that the boundary and regime issues are too closely interrelated to be separated -- i.e. if a desirable regime can be agreed upon we would perhaps favor a narrow zone of national jurisdiction, but if an acceptable regime cannot be negotiated we would perhaps favor a broad zone of national jurisdiction.

As more and more nations assert control over seabed areas in deeper and deeper water far from their shores, it is clear that we will effectively lose the option of agreeing to any boundary/regime combination which contains a narrow zone of national jurisdiction unless we take some positive action to protect this option.

Two courses of action are available: we can seek international agreement, or an understanding, that there will be a moratorium upon seabed boundary claims pending

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an effort to arrive at agreed solutions; or (separately or in conjunction with the former alternative) we can unilaterally protest all actions which might effectively diminish the available options. Whether or not the second course is adopted it is important now to proceed vigorously to pursue the first if it is to be adopted. A prompt decision on this issue is necessary so that we can undertake any necessary consultations prior to August.

Terms of a Moratorium.

In early January, 1969 there was general agreement within the Executive Branch that the U.S. should propose and seek support for a moratorium on boundary claims. There was, however, disagreement over whether the proposal should state that the moratorium applied only to claims beyond a depth of 200 meters. State and Defense favored inclusion of this figure; Interior and Commerce opposed it on the ground that it would tend to prejudice location of the boundary in favor of 200 meters.

During the March, 1969 meeting of the Seabeds Committee an intensive but unsuccessful effort was made within the United States Government to reach agreement on a proposal which did not contain a reference to 200 meters. State and

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Defense supported a proposal covering all boundary claims, including those based on the 1958 Convention; Interior and Commerce supported a proposal covering only "further" claims.

This difference is substantial. Under the proposal which State has most recently recommended to Interior claims based on an interpretation of the Convention would not be prejudiced, but they would be held in abeyance until an effort could be made to negotiate an agreed boundary. Under the proposal most recently made by Interior a coastal State can, through increasing technological capability of its lessees, extend its jurisdiction under the Convention to the abyssal ocean floor. Under the NPC view the U.S. presently has rights to that point. The Convention and its history are sufficiently ambiguous to allow other nations to support the moratorium favored by Interior and Commerce and then (perhaps upon urging by U.S. companies seeking large mineral concessions) to espouse the Interior or NPC interpretation of the Convention. If this were to happen the possibility of eventual agreement to a narrow zone of coastal State jurisdiction would be greatly diminished.

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Other differences are much less important. It should be possible to overcome them if agreement can be reached, or other resolution reached, on the more important issue separating the various Departments. The area of agreement is large.

Hopefully agreement to a moratorium proposal can be reached at the Thursday meeting. If agreement is not reached, there should be discussion of the procedure to follow in order to resolve the issue of what, if any, moratorium proposal the USG should make. The most promising possibility is that the issue should be referred to the NSC for prompt decision.

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